

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ARNOLD VILLEGAS, II
Claimant

VS.

HALLMARK CARDS, INC.
Respondent,
Self-Insured

)
)
)
)
)
)
)

Docket No. 270,660

ORDER

Respondent appealed the January 18, 2002 preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for back and bilateral upper extremity injuries allegedly caused from repetitive traumas, which allegedly began in 1990 and continued through October 9, 2001.¹ In the January 18, 2002 Order, Judge Avery awarded claimant medical benefits.

Respondent contends Judge Avery erred. It raises the following issues on this appeal:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment?
2. Did claimant provide respondent with timely notice of the accident and timely written claim?
3. Did claimant file a timely application for hearing with the Division of Workers Compensation?

¹ This information is taken from the Application for Hearing filed with the Division of Workers Compensation on October 17, 2001. The Application also states that claimant's period of accident includes his last day of work, but the evidence presented at the January 14, 2002 preliminary hearing seems to indicate that claimant was continuing to work as of that date. See page 22 of the transcript.

Respondent's principal argument is that claimant's injury occurred in 1994 and, therefore, "this claim is not compensable because it was not filed in a timely manner."

Claimant requests the Order for Medical Treatment be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order entered by Judge Avery should be affirmed. Claimant's testimony is uncontradicted that he first began having upper extremity symptoms in the early to mid-1990s that he attributed to his work activities with respondent. Claimant reported those symptoms to respondent's nurse. Claimant's symptoms have continued to worsen despite eventually changing jobs from a feeder packer and becoming a batch operator.

The Board finds it is more probably true than not that due to his work activities claimant has sustained a series of repetitive traumas to his upper extremities that has resulted in the present need for medical treatment. That conclusion is supported by the medical evidence presented at the preliminary hearing through the letters from Dr. Kimball Stacey and Dr. Thomas J. Hamilton.

In a January 14, 2002 letter to claimant's attorney, Dr. Stacey wrote:

In response to your phone call January 14, 2002, I did examine Mr. Villegas on October 12, 2001, and on November 16, 2001. To answer your first question, according to the history given to me by Mr. Villegas the claimant's right arm pain is related to his work injury while employed at Hallmark and has gotten continually worse from repetitive work at Hallmark. In answer to your second question, I do not believe that he has reached Maximal Medical Improvement as of yet. In my opinion Mr. Villegas could benefit from a referral to Dr. McCoy for an orthopedic consultation. Also, the need for treatment would relate from the work injury. All opinions are expressed with a reasonable degree of medical certainty related to his injury. . . .

A November 7, 2001 letter written by Dr. Hamilton reads, in part:

Mr. Arnold Villegas II has had shoulder complaints off and on for 8 years. Over the last 3-4 years, he has had worsening of his shoulder complaints with increasing pain, decreasing range of motion and progressive exacerbation of his shoulders. I believe this issue is going to continue to give this patient difficulty over time. Work limitations have been of questionable value. The progressive worsening of both shoulders may continue.

The Board also finds that claimant continued to sustain repetitive trauma to his upper extremities through the filing date of the Application for Hearing in October 2001 and through the date of the preliminary hearing on January 14, 2002, as claimant testified at the hearing that he was then performing the duties of a batch operator. Accordingly, the Board concludes that claimant provided respondent with timely notice² of the accidental injury and timely written claim.³ Similarly, the Board concludes claimant timely filed his Application for Hearing.⁴

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to being modified upon a full hearing of the claim.⁵

WHEREFORE, the Board affirms the January 18, 2002 Order for Medical Treatment entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

BOARD MEMBER

c: Bruce Alan Brumley, Attorney for Claimant
John D. Jurcyk, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² See K.S.A. 44-520.

³ See K.S.A. 44-520a.

⁴ See K.S.A. 44-534.

⁵ K.S.A. 44-534a(a)(2).